

MICHAEL SHEARN

IBLA 87-255

Decided September 20, 1988

Appeal from a decision of the New Mexico State Office, Bureau of Land Management, rejecting the high bid in a competitive oil and gas lease sale. KS NM 67663.

Affirmed.

1. Oil and Gas Leases: Competitive Leases--Oil and Gas Leases: Discretion to Lease

The Secretary of the Interior has the discretionary authority to reject a high bid in a competitive oil and gas lease sale if the record discloses a rational basis for the conclusion that the amount of the bid was inadequate. The explanation provided must inform the bidder of the factual basis of the decision and must be sufficient for the Board to determine the correctness of the decision if disputed on appeal.

2. Oil and Gas Leases: Competitive Leases--Oil and Gas Leases: Discretion to Lease

When the Government rejects a competitive oil and gas lease high bid because the bid was less than its fair market valuation, the bidder must not only show the lack of a rational basis for the decision, or that BLM erred when formulating its fair market valuation, but must also establish that its bid represents fair market value in order to be awarded the lease.

APPEARANCES: Michael Shearn, pro se; Margaret C. Miller, Esq., Office of the Solicitor, U.S. Department of the Interior, Santa Fe, New Mexico, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Michael Shearn has appealed from a decision of the New Mexico State Office, Bureau of Land Management (BLM), dated December 18, 1986, rejecting his high bid for parcel 16 (KS NM 67663) in the competitive oil and

gas lease sale held November 19, 1986. Parcel 16 included 320 acres in the Hugoton field in Morton County, Kansas, described as the S\, sec. 32, T. 33 S., R. 41 W., sixth principal meridian. Appellant's bid of \$34,200 (\$106.88 per acre) exceeded the only other bid, \$17,120 (\$53.50 per acre).

On November 24, 1986, BLM sent appellant a notice of probable rejection of his bid. The notice stated that appellant's high bid was lower than the "presale estimate of value" (PEV) BLM had assigned to the parcel. BLM did not reveal the PEV figure in the notice. BLM allowed appellant 15 days from receipt to submit information to justify his bid. Appellant responded to this notice with a series of statements asserting that due to market conditions and geology his bid was fair.

On December 18, 1986, BLM issued its decision rejecting appellant's bid because it did not represent fair market value. BLM indicated that it was including with the decision a copy of a December 16, 1986, report prepared by the Southeast Region Evaluation Team. That report in the form of a New Mexico State Office memorandum from the Chief, Branch of Appraisals and Evaluation, to the Chief, Mineral Leasing Unit 1, explained the bid rejection as follows:

[T]he offered high bid on this parcel was below the Presale Estimate of Value (PEV) set by the Branch of Appraisals and Evaluation (BAE). That PEV, at \$500 per acre, was based on lease data which were "truly comparable" within the meaning of a recent Interior Board of Land Appeals (IBLA) decision. In that decision [Suzanne Walsh, 94 IBLA 249, 252 (1986)], the Board held that factors to be considered in determining comparability include whether the leases compared are contemporaneous and are adjacent to or on an extension of the same geologic setting as the parcel being evaluated. The lease sale data used by BLM in developing the PEV for Parcel No. 16 were contemporaneous and were from adjacent lands in the same geologic setting.

Because the high bid was beneath the PEV, a postsale review of Parcel No. 16 was conducted by the BAE in accordance with procedures described in Instruction Memorandum No. 85-490. As part of the postsale review, a "Notice of Probable Rejection (NOPR)" was sent to Michael Shearn.

Although Mr. Shearn did respond to the NOPR, he provided no factual information useful in a postsale evaluation other than an unsubstantiated assertion that parcels become less valuable as one moves north and/or west in this geologic setting. To give Mr. Shearn "the benefit of the doubt," his assertion of diminishing attractiveness as a function of movement along a northwest trend was tested as discussed in Attachment 1. As a result of that analysis, a final estimate of tract value of \$265 per acre was developed for Parcel No. 16. Based on this FETV [final estimate of tract value], we have concluded that the high bid offered by Michael Shearn on Parcel No. 16 is inadequate and should be rejected.

BLM supported this conclusion by attaching a computer analysis of neighboring tracts. On the computer printouts, BLM added notations which showed a mean bid of \$527.46 per acre in the parcel 16 township and mean bids of \$1,100.97 per acre and \$197.66 per acre in neighboring townships for the November 1986 sale. BLM acknowledged that certain variables may affect the comparability of leases within a small geographic area, and applied a statistical analysis to discount for such variables (Attachment 1 at 2). BLM also attached a map showing that the November 1986 acceptable high bids received for parcels surrounding parcel 16 ranges from approximately three to five times appellant's bid. 1/

In his statement of reasons on appeal, appellant asserts that the BLM approach to fair market value determination was too restrictive because it did not adequately account for all relevant market factors. He points out that bids for adjacent tracts may vary. He insists that his bid represents the market value in that it was more than double the minimum bid allowed at the sale and double the other bid. He notes that this target area is characterized by isolated lenticular gas deposits and by variable porosity and permeability. He contends that BLM and congressional policy is to maintain a healthy oil industry which he asserts can be accomplished by supporting independents and issuing such leases. He also attaches a portion of a chart taken from an oil and gas newsletter for October and November of 1986 which showed bonus values in Morton County, Kansas, ranging from \$35 to \$50 per acre.

BLM responded with a copy of the report language quoted above, which it had provided with the decision, and attached computer printouts of sales bids in the parcel 16 township for the November 1986 sale, this time noting that the average bid was \$588.58 per acre. 2/ Additional printouts showed average bids of \$667.78 per acre and \$166.99 per acre in neighboring townships for the combined acceptable high bids received in the September 1986 and November 1986 sales.

[1] Appellant has not challenged BLM's discretionary authority to reject a bid for a competitive oil and gas lease if it considers the bid inadequate. 30 U.S.C. § 226(b) (1982); 43 CFR 3120.5(a); MTS Limited Partnership, 95 IBLA 337 (1987); Michael Shearn, 87 IBLA 168, 169 (1985). This Board has consistently upheld that authority, so long as there is a rational basis for the conclusion that the highest bid does not represent the fair market value of the parcel. Victor P. Smith, 101 IBLA 100 (1988); Viking Resources Corp., 80 IBLA 245, 246 (1984). Departmental policy in the

1/ That map shows, and the map included as part of BLM's answer confirms, that the November 1986 bid of \$291 per acre for parcel 22, which parcel borders parcel 16 on the south, was rejected as inadequate.

2/ We note that the report language included as part of BLM's answer states that the FETV was \$275. That figure differs from the \$265 figure stated in the Dec. 16, 1986, report for the FETV. That difference is unexplained by BLM. We must conclude that the \$275 figure represented a typographical error.

administration of its competitive leasing program must be to seek the return of fair market value of the grant of leases, 43 U.S.C. | 1701(a)(9) (1982), and the Department reserves the right to reject a bid which will not provide a fair return. Viking Resources Corp., *supra* at 246.

When exercising the authority to reject a high bid, the Department is entitled to rely on the reasoned analysis of its technical experts in matters involving geologic evaluation of tracts of land offered at a sale of competitive oil and gas leases. Matthew Wolf, 98 IBLA 193 (1987); Viking Resources Corp., *supra* at 247. However, when BLM relies on that analysis, it must ensure that a reasoned explanation to support the decision is provided in the record. Mesa Petroleum Co., 81 IBLA 194, 195 (1984).

When BLM issued its decision rejecting appellant's bid, it provided a reasoned explanation in the record to show a rational basis for its conclusion that appellant's bid for parcel 16 did not represent fair market value. BLM analyzed comparable tract data generated in the sale to derive its postsale fair market valuation for the parcel. In its postsale analysis, BLM initially estimated the value of this parcel to be \$500 per acre then, after considering appellant's assertions, BLM lowered it to the FETV of \$265. This lower estimate is still more than double appellant's bid. Although BLM has permitted acceptance of marginal bids which deviated from the presale valuation based on postsale analysis, this is not a "close call." Michael Shearn, 96 IBLA 13, 17 n.4 (1986); Suzanne Walsh, 94 IBLA 249, 253 (1986). The BLM postsale estimate of value is substantially higher than appellant's bid. We conclude that the record is sufficient to justify rejection of appellant's bid. See Billy Krumbein, 92 IBLA 362, 363 (1986).

[2] Although the Board has held that BLM should provide a rational basis for its determination to reject a high bid, we have also concluded that the high bidder must establish that his bid represents fair market value in order to be awarded the lease. Miller Brothers Oil Corp., 100 IBLA 172, 175 (1987); Burton/Hawks, Inc., 98 IBLA 118, 122 (1987). 3/ Appellant attached a portion of an oil and gas newsletter which included county-wide bonus figures. There was no further explanation of this data regarding its source. Clearly, BLM's data, which stresses bids made for Federal leases in the immediate area of parcel 16 at or around the same time as appellant submitted his bid, is more probative of fair market value than the page from the newsletter provided by appellant.

Appellant also complains that BLM's analysis did not account for irregularities in the target formations. However, the report which accompanied the BLM decision indicated that BLM took such variables into account. Appellant did not present either an alternative analysis or data which would rebut the BLM calculations.

3/ This is true even when BLM fails to provide a rational basis for its rejection decision or where the high bidder shows BLM has erred in its determination of a minimum acceptable bid value. Miller Brothers Oil Corp., *supra* at 175.

Appellant further argued that it is in the national interest to accept his bid in order to encourage participation by "independents" in Federal oil and gas leasing. As we said in Michael Shearn, 96 IBLA at 16 n.2:

[I]t is still the primary policy of the Department to obtain fair market value in competitive oil and gas leasing. Until the policy is changed, when the record supports BLM's determination that a high bid does not constitute fair market value, the Board cannot disavow that policy in an effort to lend a helping hand to "independents." [4/]

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the New Mexico State Office is affirmed.

Bruce R. Harris
Administrative Judge

I concur:

Kathryn A. Lynn
Administrative Judge
Alternate Member

4/ On Dec. 22, 1987, Congress, by enacting the Federal Onshore Oil and Gas Leasing Reform Act of 1987, P.L. 100-203, 101 Stat. 1330-256, amended 30 U.S.C. § 226(b)(1)(1982), to provide initially for an all-competitive leasing procedure for the leasing of Federal oil and gas, bidding to take place at oral auction. BLM may allow the submission of information and the nomination of lands appropriate for competitive bidding. 43 CFR 3120.3-1; 53 FR 22814, 22829, 22844 (June 17, 1988). Leases for which no bids are received will be offered noncompetitively. 43 CFR 3120.6; 53 FR 22831, 22845 (June 17, 1988).